

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DESHAN WATSON,

Petitioner,

v.

MAGGIE MILLER-STOUT,

Respondent.

No. C11-5013 RBL/KLS

REPORT AND RECOMMENDATION

Noted for: February 11, 2011

This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner is an inmate at the Airway Heights Correction Center in Airway Heights, Washington. He has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and an application to proceed *in forma pauperis*. ECF No. 1. Because Petitioner appears to have sufficient funds with which to pay the \$5.00 court filing fee, the undersigned recommends the Court deny the application.

DISCUSSION

A district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. See 28 U.S.C. §1915(a). However, the court has broad discretion in denying an application to proceed *in forma pauperis*. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), cert. denied, 375 U.S. 845 (1963).

1 Several district courts have ruled that denial of *in forma pauperis* status is not
2 unreasonable when a prisoner is able to pay the initial expenses required to commence a lawsuit.
3 *See Temple v. Ellerthorpe*, 586 F.Supp. 848 (D.R.I. 1984); *Braden v. Estelle*, 428 F.Supp. 595
4 (S.D.Tex. 1977); *U.S. ex rel. Irons v. Com. of Pa.*, 407 F.Supp. 746 (M.D.Pa. 1976); *Shimabuku*
5 *v. Britton*, 357 F.Supp. 825 (D.Kan. 1973), *aff'd*, 503 F.2d 38 (10th Cir. 1974); *Ward v. Werner*,
6 61 F.R.D. 639 (M.D.Pa. 1974).

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8 By requesting the Court to proceed *in forma pauperis*, Petitioner is asking the
9 government to incur the filing fee because he allegedly is unable to afford the costs necessary to
10 proceed with his petition for *habeas corpus*. Petitioner's application reflects that he is employed
11 at the Airway Heights Corrections Center and that over the six month period of June 1, 2010
12 through November 30, 2010, he had average monthly receipts of \$323.99 and an average
13 spendable balance of \$96.35. ECF No. 1, p. 3. The undersigned recognizes that the funds to
14 which Petitioner has access may not be great. However, given the fact that a prisoner's basic
15 needs are provided for while he is incarcerated and the minimal filing fee required to proceed
16 with this action (\$5.00), it is not unreasonable to expect Petitioner to pay that fee from those
17 funds.
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19 CONCLUSION

20 Because Petitioner appears to have sufficient funds to pay the filing fee, the undersigned
21 recommends that the Court deny his application to proceed *in forma pauperis*.
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23 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure
24 ("Fed. R. Civ. P."), Petitioner shall have fourteen (14) days from service of this Report and
25 Recommendation to file written objections thereto. See also Fed. R. Civ. P. 6. Failure to file
26 objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474

1 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed set
2 this matter for consideration on **February 11, 2011**, as noted in the caption.

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4 **DATED** this 20th day of January, 2011.

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7 Karen L. Strombom
8 United States Magistrate Judge
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